FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH AT NAGPUR

Second Appeal No. 137/2007
(Smt.Rangoobai wd/o Diwalu Mandhare (Dead) Thr. L.R's Haridas Diwalu Mandhare **VERSUS** Sampat Narayanrao Mandhare **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr.Bhendarkar, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 28th August, 2007.

Heard the learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for a declaration that she was the owner of plot no.8 and the same be transferred by the defendant in favour of the plaintiff as the defendant had wrongly mutated the plot no.8 in his name.

The defendant denied the suit of the plaintiff and pleaded that the Government had allotted plot no. 8 to the plaintiff and plot no.18 to the defendant. It was further pleaded by the defendant that both the plots were of the same size. It was then pleaded by the defendant that the *pattas* were also issued to the plaintiff and the defendant. The defendant also

pleaded that at the request of the plaintiff, the plot allotted to the defendant was transferred in favour of the plaintiff and the plot allotted to the plaintiff was transferred in favour of the defendant. This was done by a registered sale-deed executed by the plaintiff in favour of the defendant and vice-versa. The defendant lastly pleaded in the written statement that the plaintiff had already constructed a house on plot no.18 and defendant had constructed plinth on plot no.8. The suit filed by the plaintiff, according to the defendant, was a frivolous one and was liable to be dismissed.

On the aforesaid pleadings of the parties, the trial Court framed the issues and held that the plaintiff had failed to prove that she was the owner of plot no.8. The Court held that the plaintiff further failed to prove that the defendant had fraudulently obtained her signature on blank stamp paper and got the suit house mutated in his name in Gram Panchayat record. The Court, however, held that the defendant had succeeded in proving that the plaintiff gave her plot

no.8 to the defendant and the defendant gave plot no. 18 to the plaintiff by way of exchange by executing registered sale-deeds. The suit filed by the plaintiff was dismissed.

The appeal preferred by the plaintiff was also dismissed.

The only question raised on behalf of the appellant is that, in view of the original deed of transfer by the Government to the plaintiff and the defendant, the properties could not have been further transferred to a third party or to anybody else without prior permission of the Government.

The submission made on behalf of the appellant is ill-founded for the reason that the appellant is trying to take advantage of her own wrong.

Both the Courts have concurrently held that the defendant had been successful in proving that the defendant exchanged his plot no.18 with the plaintiff and the plaintiff exchanged her plot no.8 with the defendant by executing registered sale-deeds. The

prohibition in the deed of transfer by the Government in favour of the plaintiff or the defendant would operate between the Government and the parties and would not operate between the parties inter se, specially when the parties had constructed on the plots which had been exchanged by them by registered sale-deeds.

The findings recorded by both the Courts are pure findings of fact based on a proper appreciation of the material evidence on record. The findings do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE